

James Markwick the Plaintiff.

The Mayor Commonalty and Citizens
of the City of *London*, Defendants.

} Upon a Writ of Error; Returnable in Parliament.

The C A S E of *James Markwick*, the Plaintiff in Error.

TH E City of *London* have power annually to Elect two Sheriffs for *London* and *Middlesex*.
By a By-Law made the 20 *July*, 7 *Car.* 1. The Day for Electing such Sheriffs, is appointed upon Midsummer Day. But if there be occasion for subsequent Elections, the same may be on such Day after, as the Lord Mayor and Aldermen shall appoint.

And if any Freeman of the said City shall be chosen Sheriff, and publick Proclamation shall be made thereof upon the *Hustings* in *London*. And he shall not appear Personally before the Mayor and Aldermen at the next Court, and then and there become Bound unto the Chamberlain of the said City, in a Bond of 1000*l.* Penalty, with condition not to be void, but upon taking upon him the Office of Sheriff, or paying 400*l.* to the Mayor and Commonalty of the said City, in case he shall refuse to hold the Sherifffally, which Forfeitures are to be recovered by Action or Bill, in any Court of Record within the said City; in pursuance of this By-Law.

24th, *June* 1698. The City proceeded to the Election of Sheriffs, for the Year ensuing; and chose *Edward Cresnar*, and *John Scot* two Freemen, who refusing as several others did afterwards, to hold the said Office, of Sherifffally.

At a subsequent Election, viz. 18 *August*, 1698. One Mr. *Thomas Woods* Merchant, was chosen to be one of the said Sheriffs.

But he happening at that time to be beyond the Seas upon his necessary Occasions. Could not appear to give Bond according to the said By-Law, and for that Reason, was Fined 400*l.* notwithstanding the said Mayor and Court of Aldermen, were informed upon the *Hustings*, that he was gone for *Holland*.

And in fact the said *Woods* had not notice of his said Election, till another was duely chosen into his Room.

For which 400*l.* an Action of Debt was afterwards brought against him, By the Mayor, Commonalty and Citizens of *London*, in the Lord Mayor's Court.

To this Action *Woods* Plead; And the Lord Mayor Demurred to his Plea, and the Demurrer was allowed of, by the Recorder, and Judgment was given for the Lord Mayor.

Upon this the Def. *Woods* brought a Writ of Error, before the Lord Chief Justice *Holt*, Lord Chief Baron *Ward*, and other Judges, Commissioners at *St. Martins-le-grand*. Who thought fit to reverse the said Judgment, because it appeared that the Lord Mayor was both Judge and Party. Being Plaintiff in an Action, in a Court holden before the Lord Mayor.

After this the Lord Mayor Commonalty and Citizens of *London*, bring another Action against the said *Woods*, in one of the Sheriffs Courts of *London*, for the said 400*l.* To which the Def. Plead in the like manner as he had done before, and the Plaintiffs Demurred, and Judgment was given a second time, for the Lord Mayor, &c.

And to prevent their Suing out execution immediately, Mr. *Woods* was forc'd to bring a Writ of Error into the Court of *Hustings*.

But before the Judge of the Sheriffs Court, would allow the said Writ of Error, the said *Woods* was obliged by the said Court to enter into Bond, with Sureties that he should Prosecute the said Writ of Error with effect. And in this Bond the Plaintiff *James Markwick*, became Bound to the said Mayor Commonalty and Citizens, in the Penall Sum of 800*l.* And under pretence that the said Mr. *Woods* did not prosecute his said Writ of Error with effect, the said Bond is put in Suit against the said *James Markwick*, in the Court of Common Pleas at *Westminster*, at the Suit of the said Mayor Commonalty and Citizens of *London*.

To this *Markwick* Plead, that *Woods* had Prosecuted the said Writ of Error with effect.

For in Fact, he had done all in him lay to get the Record Transcribed, by paying all the Fees, that could be demanded for the Transcribing it, and Soliciting the Officer Day by Day, to Transcribe it in time.

But by a Combination between the Clerk of the Papers, and the Attorney for the Lord Mayor, (as the Plaintiff *Markwick* verily believes) the Record was not brought in by the time the Rule given in the Court of *Hustings*, required it to be brought in; and therefore a *Non pros* was entred in the said Court. And *Woods* thereupon was taken in Execution for the said 400*l.* and Cofts: And lies now in the Fleet in Execution for the same.

These Matters being all set forth, and disclosed in the Pleadings to the Lord Mayors Suit upon this Bond in the common Pleas; the same came to be Argued upon a Demurrer before the Judges of the Court of *Common-pleas* who giving Judgment for the Plaintiff. A Writ of Error was brought before the Judges of the *Queens Bench*.

And the Points chiefly insisted upon by *James Markwick's* Council. Were these,

1st, That the said Bond of 800*l.* Extorted from *Woods* and *Markwick*, was Illegal and Void.

2^{ly}, That the proceedings in the Court of *Hustings* were contrary to all Rules of Justice. Because the Lord Mayor is both Judge and Party in those Proceedings.

And upon these Points, the Judges of the *Queens Bench*, were for some time divided: But at length by the Opinion of the rest of the Judges, against my Lord Chief Justice *Holt*; Judgment was affirmed against the Plaintiff, wherefore he has brought this Writ of Error, hoping that your Lordships will never suffer a Judgment to stand, where it plainly appears that the Lord Mayor of *London*, who was Plaintiff in the original Cause, was Judge likewise in the Court, where this Nonsuit was pronounced, which Nonsuit is assigned as the Breach of the Obligation the Plaintiff *Markwick* is Sued upon, and Condemned in 800*l.* Penalty.

James Mountague.
Spencer Comper.